

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN INSECT TRAPS

Inv. No. 337-TA-498

NOTICE OF INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. §1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 8, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §1337, on behalf of American Biophysics Corporation of East Greenwich, Rhode Island. A supplement to the complaint was filed on August 27, 2003. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain insect traps by reason of infringement of claims 1-3, 5-7, 9, 13, 28, 31-33, 35-37, 39-41, and 43-45 of U.S. Patent No. 6,286,249 B1 and claims 1-4, 7, 15-19, and 21-39 of U.S. Patent No. 6,145,243. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket imaging system (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2579.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §210.10 (2003).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on September 8, 2003, ORDERED THAT –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain home vacuum packaging machines by reason of infringement of claims 1-3, 5-7, 9, 13, 28, 31-33, 35-37, 39-41, or 43-45 of U.S. Patent No. 6,286,249 B1 or claims 1-4, 7, 15-19, or 21-39 of U.S. Patent No. 6,145,243 and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is –
American Biophysics Corporation
2240 South County Trail
Greenwich, RI 02818-1536

(b) The respondent is the following company alleged to be in violation of section 337, and is a party upon which the complaint is to be served:

Blue Rhino Corporation
104 Cambridge Plaza Drive
Winston-Salem, NC 27104

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Suite 401, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §210.13. Pursuant to 19 C.F.R. §§201.16(d) and 210.13(a), such response will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the response to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against such respondent.

By order of the Commission.

Marilyn R. Abbott
Secretary

Issued: September 8, 2003